

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-CR-2-BO

UNITED STATES OF AMERICA,)
)
v.) ORDER
)
JOHNNIE LEE DANIEL)
)

This cause comes before the Court on defendant's motion for compassionate release. The government has responded and the matter is ripe for ruling. For the reasons discussed below, defendant's motion is denied.

FACTS

Defendant is currently in the custody of the Federal Bureau of Prisons (BOP) serving a 120 month sentence of imprisonment for conspiracy to distribute and possession with intent to distribute fifty or more grams of cocaine base and 500 grams or more of cocaine as well as possession of a firearm by a convicted felon.

Defendant states that he will succumb to death in less than eleven months due to lung and prostate cancer. Defendant petitioned the BOP to grant his compassionate release or for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A) and the BOP denied his request. Defendant now asks this Court to grant his compassionate release.

DISCUSSION

Section 3582(c)(1)(A) allows a court to grant compassionate release only upon a motion of the BOP Director. Whether to make this motion is solely in the Director's discretion, and is not subject to judicial review. *See, e.g., Turner v. United States Parole Comm'n*, 810 F.2d 612,

618 (7th Cir. 1987) (Administrative Procedure Act precludes judicial review of a decision of the Director of the BOP under § 3582(c)(1)(A)'s predecessor, 18 U.S.C. 502(g)); *Fernandez v. United States*, 941 F.2d 1488, 1492-93 (11th Cir.1991) (BOP has absolute discretion over whether to utilize statute to move sentencing court to reduce term of imprisonment, and district court is precluded from reviewing Bureau's inaction); *Engle v. United States*, 26 Fed. App'x 394, 397 (6th Cir. 2001) (unpublished) (district court lacks jurisdiction to grant compassionate release, even of terminally ill inmate, in absence of motion by BOP Director). Thus, the Court cannot review the BOP's refusal to motion this court for a reduction in defendant's sentence nor does it have jurisdiction to consider defendant's motion.

Accordingly, the Court dismisses defendant's compassionate release motion for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

CONCLUSION

Defendant's motion under 18 U.S.C. § 3582(c)(1)(A) for compassionate release [DE 63] is DISMISSED.

SO ORDERED, this 15 day of February, 2013.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE